

**DEBTOR/CREDITOR RIGHTS COMMITTEE  
REPORT PREPARED FOR THE MARCH 7, 2019 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee**

Next scheduled meeting of the Committee: April 30, 2019

**2. Council Approval**

Change in Committee Officers and plans for upcoming meetings. Judy Calton has decided to step down as Co-Chair. It is proposed that (a) Marc Swanson become Co-Chair of the Committee with current Co-Chair, Judith Greenstone Miller and (b) Shanna Kaminski of the Varnum firm become Vice Co-Chair with current Vice Co-Chair, Paul Hage. It is also proposed that Judy Calton be designated the Emeritus Past-Chair of the Committee based on her long years of service and commitment to the Committee and the Business Council

**3. Membership**

The Committee communicates regularly with its membership through its email list, with announcements of Committee events, case law alerts, and announcements of events of interest to bankruptcy and insolvency law practitioners. This increases the Committee's profile. In addition, holding regular meetings and educational events increases the interest of the bar in becoming members. We regularly receive inquiries from bar members about joining the Committee and respond immediately to reach out to the individuals.

The Committee works with other bankruptcy/insolvency bar groups and the bankruptcy bench to expose the members of those groups to the Committee and its activities, also increasing interest in the Committee.

The Committee has healthy attendance at its meetings and events. Eighteen members attended the Committee's January 16, 2019, including several new attorneys.

**4. Accomplishments Toward Committee Objectives**

One of the Committee's objectives is communicating case law updates and debtor/creditor events to its members. The Committee has been actively using its listserv to accomplish these objectives. The Committee has also planned a seminar on healthcare restructurings that should be of great interest to its members given the increasing amount of healthcare related bankruptcies in Michigan. The Committee has also attracted new members to its events by changing the location of its meetings.

## 5. Meetings and Programs

### Recent:

The Committee's last meeting January 16, 2019. At that meeting, the Committee discussed educational events for 2019, leadership changes in the Committee, a report from the Co-Chairs, amendments to the Federal Rules of Bankruptcy Procedure, and new case law and statutes.

### Future:

ICLE and the State Bar of Michigan are working on creating practice roadmaps to outline what lawyers should know to practice in various areas of law. Mary Hiniker of ICLE is creating the outline and will present it to the Committee at our April 30 meeting so that members may comment on the draft.

The Committee is planning a seminar on healthcare restructurings, to take place on July 24, 2019. Judith Greenstone Miller will moderate a discussion among several healthcare experts including, Samuel R. Maizel, leader of Denton's healthcare industry restructuring efforts nationwide.

## 6. Publications

See Legislative/Judicial/Administrative Developments, below in Section 7.

## 7. Legislative/Judicial/Administrative Developments

The Committee leadership is active in monitoring new statutes, rules and cases of interest to our members. Co Vice-Chair Paul R Hage writes case notes for the American Bankruptcy Institute's monthly magazine, and also keeps the Committee apprised of new case law developments.

### **Publication of Proposed Amendments to Federal Rules of Bankruptcy Procedure:**

The Standing Committee on Bankruptcy Rules for the National Judicial Conference ("Standing Committee") submitted proposed amendments to various rules of the Federal Rules of Bankruptcy Procedure. The Committee recently reviewed, prepared and submitted formal written comments to proposed Federal Rule of Bankruptcy Procedure 2004(c) because, unlike Federal Rule of Civil Procedure 26, it did not contain the concept of proportionality with respect to e-discovery. A copy of the formal comments prepared by Judith Greenstone Miller submitted by the Committee to the Standing Committee are attached as **Exhibit A** hereto. The Committee is also making inquiry about the ability to testify at an upcoming meeting of the Standing Committee considering the proposed rule changes.

### **Assignment of Rents:**

A Subcommittee of the Committee reviewed the Uniform Assignment of Rents Act, and modified it to conform to Michigan practice, and is working with members of the State Legislature and, as a result thereof, the Subcommittee has suggested that the State of Michigan consider adopting it. The Task Force modified the uniform act and is in the process of working with members of the State legislature to have the legislation introduced. The new legislation, if adopted, would make the grant of an assignment of rents a security interest, as opposed to an absolute assignment, which would have a significant impact on the manner in which single asset real estate debtors' cases are handled. The Committee has not yet formally considered and voted on this proposed legislation but plans to do so at its April 30, 2019 meeting. While the Business Law Council of the Business Law Section has endorsed this legislation, to the extent that the Committee has concerns or reservations regarding it, the Committee may ask the Business Council to withdraw or delay its support of the legislation.

### **Receivership Legislation:**

Last year, the State of Michigan adopted the Uniform Commercial Real Estate Receivership Act ("UCRERA"). A Subcommittee of the Committee reviewed a proposed amendment to that legislation that, if adopted, would expand the provisions of UCRERA to all business receiverships, including those of operating businesses and not just real estate cases. The Subcommittee modified the proposed amendment and is in the process of working with members of the State legislature to have the legislation introduced. The Committee has not yet formally considered and voted on this proposed legislation but plans to do so at its April 30, 2019 meeting. While the Business Law Council of the Business Law Section has endorsed this legislation, to the extent that the Committee has concerns or reservations regarding it, the Committee may ask the Business Council to withdraw or delay its support of the legislation.

## **8. Miscellaneous**

The Committee discusses legislative developments and case law at its meetings, many of which are brought to our attention by our members.

Judy B. Calton, Co-Chair  
Judith Greenstone Miller, Co-Chair

Paul R. Hage, Co-Vice Chair  
Marc N. Swanson, Co-Vice Chair